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Water Docket
Environmental Protection Agency
Mail code: 2822T
1200 Pennsylvania Ave., NW.
Washington, D.C., 20460

Comments Sent via Web Form

Re: Comments on the Chesapeake Bay TMDL

Introduction

Lycoming County appreciates the opportunity to review and provide comments on the United States Environmental Protection Agency's (EPA) draft Total Maximum Daily Load (TMDL). Since 2007, the County has proactively worked to develop and implement a county-based nutrient management strategy designed to implement at the local level the goals and objectives of Pennsylvania's Chesapeake Bay Tributary Strategy. Lycoming County, working along with the Pennsylvania Departments of Environmental Protection and Community and Economic Development and other state and federal organizations, has invested more than \$600,000 in developing and implementing this strategy. Current public funding support committed to this effort to date stands at almost \$1.5 Million. The County supports EPA's efforts to implement the TMDL and DEP's efforts to develop a viable WIP to cost-effectively implement the TMDL. However, the County is extremely concerned about EPA's strategy to include a "Backstop TMDL" in the current process. We believe this will be detrimental to the County's efforts to implement its Chesapeake Bay Nutrient Management Strategy as well as impose significant burdens on its residents, businesses, other sectors, and wastewater treatment plants.

While contingency planning is always appropriate, the Backstop TMDL should not be introduced in this process until the Phase 2 WIPs are submitted in November of 2011. The Backstop TMDL that ramps up the treatment requirements for wastewater treatment plants and enforces more regulatory actions on other sectors could bring into question the validity of all

voluntary actions taken by Lycoming County in implementing its Chesapeake Bay Nutrient Management Strategy during the past two years. The county has invested substantial resources while participating in the process and maintaining close coordination with both DEP and EPA in order to help us meet DEP and EPA expectations. We have worked aggressively to “do the right thing.” We are concerned that at this critical moment in time, the Backstop TMDL will bring into question: “What is the right thing?” The threat of punitive backstop measures has also strained the positive relationships that have been built across source sectors at both the state and local levels. We need to get through the Phase II WIP process before we start questioning our strategies to make progress in cleaning up the Chesapeake Bay.

The County is very concerned about actions of other levels of government compromising the proactive efforts of our local government. The County hopes that the comments below provide EPA with a better understanding of the County’s concerns and comments regarding the draft TMDL and its resolve to successfully implement the goals, objectives, and strategic actions associated with its local-developed Chesapeake Bay Nutrient Management Strategy. These comments incorporate input received from local stakeholders, including members of the County’s Chesapeake Bay Tributary Strategy Advisory Committee.

Comments

Comment #1 – As part of the County’s Strategy, it was estimated that there are \$225 million of needed WWTP improvements to respond to the Bay requirements and wet weather compliance, and many of these improvements are already underway. This has resulted in a significant increase in the sewer treatment costs and rates in the County. If the backstop TMDL is implemented, it will result in a dramatic increase in this cost. If it is implemented while some of the improvements to the facilities are under construction and/or design, it would significantly increase the cost to the facilities and the rate-payers. Lycoming County has been working very hard for the past several years to meet the requirements of the Chesapeake Bay agreement and the possibility of EPA imposing a backstop TMDL is of great concern to the County, the wastewater treatment plants, residents, agriculture community, and all of the stakeholders that have assisted with the development of our strategy.

The financial impact to the citizens of the County is of great concern because Lycoming County qualifies as an area that is “economically distressed” as defined by Section 301 of the Public Works and Economic Development Act of 1965. Lycoming’s per capita income is \$17,224 and is 79.8% of the national average¹ of \$21,587.

Comment #2 – The County’s approach to addressing the requirements of the Chesapeake Bay agreement and the development of its Chesapeake Bay Nutrient Management Strategy is to bring stakeholders, made up of both point source and non-point source representatives, together

¹ The source of this information is ESRI and U.S. Census Bureau

to work toward a solution that is more beneficial for the entire community. The threat of a “backstop” TMDL that regulates point source entities has concerned all of the County’s stakeholders. If implemented, it will place the point source entities (i.e., sewage treatment plants) and the non-point source entities (i.e., farmers) on opposite sides of the discussions and possibly result in “finger pointing”. This will not be productive and will result in these two sectors not wanting to work together.

Comment #3 – The EPA must consider that the backstop TMDL would go beyond what is necessary, appropriate and feasible infrastructure for our communities, and impose infrastructure requirements that are excessively costly with low incremental return (especially where receiving streams are not impaired) and many unintended consequences.

Comment #4 – The County believes EPA’s TMDL would require Pennsylvania’s wastewater treatment plants to be further upgraded to Enhanced Nutrient Removal, a severe restriction of Nutrient discharges. ENR should become a proven technology under more favorable conditions before it is seriously considered in Pennsylvania. Implementing ENR would represent a crushing economic burden to most residents served by public wastewater systems in our County. If this is ultimately required, significant federal dollars must accompany the federal mandate.

Comment #5 – If the draft backstop TMDL is implemented, it would have a serious impact on Lycoming County’s economic development opportunities and efforts to create jobs within the County. The increased sewer rates and the possibility of not being able to connect to the sewer system in a timely manner are directly linked to the implementation of EPA’s draft backstop TMDL. The County and its economic development partners have very serious concerns. The extremely high sewer rates that will be needed to address the improvements required by the backstop TMDL will be a deterrent to potential businesses and companies looking to locate in our County.

The County has partnered with the EPA to develop a brownfields strategy in the County. At the center of the strategy is the redevelopment of brownfield sites in our planned and designated growth areas. We are now at a critical stage in this strategy: implementation. The increased sewer rates (or a delay in connection to the sewer system that would result from the required infrastructure improvements to meet the backstop TMDL) will act as a deterrent to companies interested in redeveloping these brownfield sites. This would result in our County losing new opportunities to attract companies and create new jobs.

Comment #6 – With a significant increase in sewer rates, companies and residents located within the areas serviced by public sewer systems, the county’s designated growth areas, may move into the rural parts of our County or even out of the County. The County’s rural areas do not have public sewer systems. This shift of population and business from the growth areas to the rural parts of the County would violate the EPA’s Smart Growth principles, Pennsylvania’s Keystone Principles, and the County’s Comprehensive Plan.

Comment #7 – There needs to be a balanced approach to reducing the nitrogen and phosphorus from the Chesapeake Bay region. The draft backstop TMDL requires a significant amount of the responsibility on the point source discharges. The County’s approach has been balanced between the non-point and point source entities. During the past few years, Lycoming County has built a county-wide nutrient credit trading program that is centered on the development of Best Management Practices (BMPs) for non-point sources. A certified BMP will result in the

removal of nitrogen, phosphorus, and/or sediment from the County's waterways and ultimately the Chesapeake Bay. The non-point sources can use assistance in understanding the types of BMPs that are available as well as implementing the BMPs. The County recommends that the EPA and PA DEP work more closely together to provide outreach and technical assistance to the non-point sources in order to develop a more realistic means of obtaining improvements from them.

The BMPs are sometimes expensive for a land-owner to implement on their property. Therefore, the County would recommend that EPA and PA DEP invest more funding into programs that will allow our non-point sources to develop and implement BMPs and thus reducing these pollutants in the Chesapeake Bay. An excellent example of a successful program that should be fully funded is CREP.

Comment #8 – The County recommends that EPA recognize and approve interstate nutrient credit trading as a market-based mechanism to reduce the total cost of compliance and increase the speed and efficiency of reductions. This is a very important tool that can benefit Lycoming County, the Commonwealth of Pennsylvania, and the other Bay-region states. By increasing the marketplace for the trading and purchasing of nutrient credits, benefits will accrue to both non-point source and point source entities. It will expand the opportunities for the selling of nutrient credits from the non-point sources to point sources both inside and outside of Pennsylvania. This will increase the number of available nutrient credits that a point source can purchase as part of their efforts to comply with the Chesapeake Bay Tributary Strategy. It will also provide a cost-effective option to be coupled with infrastructure improvements as appropriate. It will also increase the amount of funding received by the non-point sources for the sale of the credits generated by the BMP. This will result in non-point sources (primarily, agricultural operations) having more available funding to invest in additional BMPs and new technologies, thereby further reducing the pollutants in the Bay.

Comments #9 – The County strongly supports increased water quality monitoring so that our county, DEP, and EPA can accurately determine the minor contributors and treat them appropriately, and identify the major contributors and treat them appropriately. The County believes the EPA should collect more data, including water quality monitoring, before implementing any backstop measures.

To the extent possible, any federal and state actions should be based on actual monitoring data rather than modeling. The County strongly opposes any regulatory allocation that is not based on concrete monitoring data. BMP improvements may take a significant amount of time from implementation until a measurable water quality improvement is noted through monitoring. The reliance on modeling has long been a concern to the Lycoming County Commissioners, who feel that models may not accurately reflect the local conditions. This is the reason that the County is currently working on a pilot water quality monitoring program as part of its Chesapeake Bay Nutrient Management Strategy.

Comment #10 – The County would recommend that there be more federal and state cost share funding available for local stormwater management projects.

Comment #11 – The County recommends that EPA and DEP investigate the BMP improvements that already exist. The EPA should put the backstop TMDL requirements on hold until an accurate and reasonable inventory of existing agricultural BMPs can be developed. Assessing and documenting existing, uncounted BMPs should be a priority for the Phase II WIPs. The

backstop TMDL should be postponed by EPA until after the Phase II WIPs are completed, and if backstop measures are enacted, they should be targeted geographically.

Comment #11 –The County recommends that funding considerations for awarding financial support for Bay recovery efforts should take into consideration that non-tidal states, like Pennsylvania, do not receive direct economic benefit from Bay restoration.

Comment #12 – The County believes that the EPA needs to partner with scientific and technical experts to develop new technologies that can be implemented in the various sectors contributing to the nutrient and sediment load. However, these new technologies should be evaluated for cost-effectiveness (especially compared to existing BMPs) when any state or federal resources are being devoted to these projects.

Comments

In conclusion, Lycoming County appreciates the opportunity to review and provide comments to the EPA on the draft TMDL. The comments defined above are intended to be constructive and assist EPA with the final revisions to the TMDL. Lycoming County is committed to continuing to implement its locally-developed Chesapeake Bay Tributary Strategy as part of its effort to comply with the federal and state requirements. The County would be interested and is available to further discuss its comments on the TMDL with the appropriate EPA staff. Please contact Megan Lehman, Environmental Planner, Lycoming County Planning and Community Development Office at 570-320-2115 or mlehman@lyco.org. Thank you.